IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3740 OF 2005

Pravin S. Lunkad ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Shirish Gupte with Mr.Sudatta J.Patil for the Applicant
Ms M.H.Mhatre,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 17,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Applicant was at the relevant time the Chairman of Krishna Valley Co-operative Bank Limited. This Application made by the Applicant is for regular bail. An offence has been registered against the Applicant punishable under Sections 403, 408, 409, 418, 420,468, 477A read with Section 34 of the Indian Penal Code.

2. The allegation of the prosecution is based on the audit report of the District Special Auditor (Class-I) of the Co-operative Societies. The allegation is regarding misappropriation of the amount to the tune of Rs.4,11,01,598/- against the Applicant and other accused who are the Vice Chairman, Managing Director, Directors and Officers of the said bank. The case made out against the Applicant in the F.I.R. is that the Applicant at the relevant time was the Chairman of the Bank. A specific case made out against the

Applicant is that the certain relatives of the Applicant were granted loan outside the area of the operation of the bank without seeking permission of the Competent Authority. The loan was granted to the said persons who are non members. It is disclosed that the total amount due and payable from the said relatives of the Applicant was Rs.87.57 lakhs and with interest thereon the said amount comes to Rs.112.46.

3. The application for anticipatory bail made by the Applicant was rejected by this Court and Apex Court. The Applicant has been in custody from 10th June 2005. Thereafter, the application for bail made by the Applicant before the learned Magistrate was rejected. The Application made by the Applicant before the Sessions Court has been rejected on the ground that the same is not pressed. A reliance is placed on the order of the Apex Court by which Special Leave Petition filed by the Applicant was dismissed by which the challenge was to the order of this Court rejecting the Application for Anticipatory bail. The Apex Court observed that the Applicant's claim for parity on the basis of orders passed in favour of the Directors of the bank can be considered while considering regular bail Application. This Application is filed on various grounds including the ground of parity.

4. The learned Senior Counsel appearing for the Applicant has placed on record a compilation of various orders passed by

this Court. By the said orders, the Managing Director of the Bank Shri S.S.Wagh, and a Director of the bank Shri N.P.Tagare and Mrs.S.S.Joshi, a Manager of the Bank have been ordered to be enlarged on bail. Reliance is placed on aforesaid orders passed by this Court on 3rd May 2005 in Criminal Application Nos.2451 of 2005, 2628 of 2005, 2710 of 2005.

5. The learned Senior Counsel appearing for the Applicant submitted that all the loan transactions were made after the resolutions were passed in the meeting of the Board of Directors. He submitted that as the other Directors are enlarged on bail, there is no reason why the benefit of parity should not be given to the Applicant. Apart from claiming parity, he submitted that the relatives of the Applicant who had taken loan from the Bank applied to the Reserve Bank of India and the Reserve Bank of India has directed the borrowers to apply for waiver of interest to the bank. He submitted that the Applicant collected a sum of Rs.35,00,000/- and the said amount has been deposited with the bank. The learned Senior Counsel further submitted that the Applicant has kept ready Demand Drafts in the sum of Rs.54,71,403/- drawn in favour of the said bank and he is willing to deposit the same with the bank.

6. The said Demand Drafts drawn in favour of Krishna Valley Co-operative Bank Ltd. are verified by the Investigating Officer Mr. Sunil Vishnu Pawar, A.P.I. who is personally

present in the Court. The learned Senior Counsel submitted that the said Demand Drafts will be submitted to the Bank by Monday 20th June 2005 with the request to credit the amounts covered by the Demand Drafts in the appropriate/Non Lien Account maintained by the bank. The statements made by Shri Gupte are accepted.

7. Apart from general allegations made by the prosecution against the Applicant regarding the role played by him in the loan and other transactions, a specific allegation is that the loan was disbursed to the relatives of the Applicant (described as Jain Group) who were not members of the bank . The principal amount due by the said Group is Rs.87.57 lakhs. With interest as of today, the said amount will be around 120 lakhs. The learned A.P.P. on instructions of the concerned Officer has accepted that a sum of Rs.35,00,000/- has already been brought back to the bank. Thus, if demand drafts totally amounting to Rs.54,71,403/- are deposited with the bank, total deposit will be Rs.89,71,403/-. In the F.I.R., the allegation regarding illegal passing of cheques worth of Rs.20,45,167.75 is against the Manager Mrs.S.S.Joshi. The allegation regarding passing cheques from the account of Dhanashree Investment is against the said Mrs.Joshi. The allegation as regards opening of bogus accounts relating to Krupa Containers and the allegation regarding account of Maha Constructions and High Tech Paint Industries is that the accounts are of the persons connected with the Vice Chairman Shri Rao. The

specific allegation against the Applicant is as regards disbursement of loan to the members of Jain Group where principal amount due is 87.57 lakhs.

8. While granting bail in Criminal Application No.2451 of 2003 filed by the Managing Director, this Court has noted that out of Rs.32 lakhs advanced to M/s. Krupa Containers by the bank, the said firm has refunded a substantial part of the loan amount. The Manager Mrs.S.S.Joshi against whom the various allegations of playing active part in the offence are made has been ordered to be enlarged on bail by this Court.

9. The Offence under Section 467 of I.P.C. regarding forgery of valuable security attracts punishment of life imprisonment. The allegation of forgery covered by Sections 467 and 468 is not made against the Applicant. For other offences alleged except Section 409 for which sentence is up 10 years, the punishment is up to 7 years. While deciding the application of the Managing Director Shri Wagh, this Court observed that considering the nature of offence, the evidence of the prosecution will be essentially documentary evidence.

10. The Applicant is in custody from 10th June 2005. As stated earlier an amount of Rs.35,00,000/- is brought back to the bank and the amount of Rs.54,71,403/- is kept ready by the Applicant. The detention of the Applicant from 10th June 2005 was ordered in the magisterial custody. The other two

co-accused are released on bail. There is no material brought on record by the prosecution indicating that custodial interrogation of the Applicant is required and in fact that is not the stand taken. As the Applicant has agreed to bring back substantial amount of Rs.54,00,000/- in addition to Rs.35,00,000/- deposited earlier, the principal amount payable by Jain Group is brought back. There is no allegation made before me that the Applicant is in possession of any documentary evidence. Therefore, the Applicant is entitled to be enlarged on bail on stringent terms and conditions. It will have to be clarified that the Applicant will be enlarged on bail only after the Investigating Officer certifies before the concerned Court that the demand drafts in the sum of Rs.54,71,403/- are encashed in favour of the Krishna Valley Co-operative Bank Ltd.

11. Hence I pass the following order :

i) The statement of the learned Senior Counsel appearing for the Applicant to deposit the Demand Drafts in the sum of Rs.54,71,403/- with the said Bank on or before Monday 20th June 2005 is accepted. As stated earlier, the demand drafts will be submitted to the said bank with a request to credit the amounts in appropriate account.

ii) The Applicant is directed to be enlarged on bail in connection with the C.R.No.11 of 2005 registered with

M.I.D.C., Kupwad Police Station, Sangli on executing P.R.Bond of Rs.1,50,000/- (Rupees one lakh fifty thousand only) with two local sureties in the like amount. It is made clear that the concerned Court will issue intimation of release of the Applicant only after the Investigating Officer certifies in writing that the sum of Rs.54,71,403/- is credited to the account of the said bank on encashment of the Demand Drafts tendered by the Applicant. Unless this condition is complied with, the bail order will not be given effect.

iii) Bail is granted to the Applicant subject to the following conditions:

a) The Applicant shall not influence any prosecution witnesses or tamper with prosecution evidence in any manner, whatsoever.

b) The applicant shall not enter District Sangli without prior intimation to the Investigating Officer, except for reporting before the Investigating Officer for the purpose of investigation in the case, in terms of the directions in this order.

c) The Applicant shall report before the Investigating Officer on Wednesday and Sunday every week between 10.00 a.m. to 1.00 p.m. till filing of the charge sheet or on such other day and time and place as may be required by the Investigating Officer for the purpose of Investigation of the case.

d) The Applicant shall inform the place of the residence and his telephone numbers to the Investigating Officer within one week from the date of release. Besides, the Applicant shall report to the nearest police station regularly till filing of the charge sheet.

e) The Applicant shall deposit passport with Investigating Officer, if any. In case, the Applicant does not possess any passport, he shall file an affidavit before this Court, disclosing that fact. Unless this condition is complied with, the order releasing him on bail will not be given effect.

f) The Applicant shall cooperate the Investigating Officer for the purpose of investigation of the case.

JUDGE